

**Mr David Moss of Burton on Trent, United Kingdom  
CIMA Disciplinary Committee hearing held on 5 April 2019**

**Preliminary Matters**

This case was considered on the papers under Rule 4(2) of the Disciplinary Committee Rules 2015 in accordance with the decision of the Chair on 31 October 2018 granting an application for the case to be considered without a formal hearing. This application was made following the Respondent's request on 5 October 2018 for the case to be considered on the papers.

**The Charge**

The Charge against Mr Moss (the Respondent) provided as follows:

1. "On 9 April 2018 you were convicted of –
  - a. Fraud by abuse of position, and
  - b. Make/supply articles for use in fraud
2. On 30 April 2018 you were sentenced to 28 months imprisonment

By reason of paragraphs 1-2 above, it is alleged that you are guilty of misconduct as defined by the Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations (October 2012 and July 2015 versions), as follows:

- a) "...in respect of any Member...(ii) conduct resulting in any conviction...relevant to their membership...with the Institute."

CIMA considers your conduct which resulted in your conviction relevant to your CIMA membership as it constitutes a breach of the fundamental principles of the Code of Ethics (October 2010 and January 2015 versions), in particular (Professional Behavior: Sections 100.5(e) and 150.1)

- b) "failure to comply with the Laws of the Institute"

CIMA considers your conviction and your conduct which resulted in your conviction a failure to comply with the Laws of the Institute in particular breaching the fundamental principle (Professional Behavior: Section 100.5 (e) and Section 150.1) of the Code of Ethics (October 2010 and January 2015 version)"

**Background**

The Respondent had pleaded guilty to two counts of fraud at Derby Crown Court on 9 April 2018. He was sentenced on 30 April 2018 to 28 months imprisonment in relation to Count 1

(Fraud by abuse of position). No separate penalty was imposed for Count 2 (Make/supply articles for use in fraud).

## **Findings of Fact**

The Respondent admitted the facts of the Charge in his application for a '*written paper only*' hearing under Rule 4(2) of the Disciplinary Committee Rules, dated 5 October 2018.

On the basis of the admissions made by the Respondent and the Certificate of Conviction from Derby Crown Court, dated 9 May 2018, the Committee accepted as conclusive evidence that he was convicted of two offences of fraud. The Committee also accepted that the sentence imposed was a term of imprisonment of 28 months.

As the Respondent's admissions were supported by the documentary evidence the Committee found the facts proved.

## **Misconduct**

Having found the facts proved, the Committee went on to consider the issue of misconduct. The Committee noted that CIMA's Byelaws and Regulations define "misconduct" as "failure to comply with the Laws of the Institute." The Laws of the Institute include the Code of Ethics. The Code of Ethics sets out a number of ethical standards that all professional accountants are required to comply with. The Code of Ethics makes it clear that "*Members and registered students must have regard to these guidelines...*".

The Fundamental Principles of the Code of Ethics includes the Fundamental Principle of Professional Behaviour:

*Section 100.5(e) of the Code of Ethics defines the fundamental principle of Professional Competence and due care as follows:*

*"Professional Behavior – to comply with relevant laws and regulations and avoid any action that discredits the profession."*

*Section 150.1 of the Code of Ethics gives further explanation as follows:*

*"The principle of professional behaviour imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession."*

The Committee accepted the written submission made by CIMA that the Respondent's convictions and the underlying conduct demonstrated a breach of the fundamental principle of Professional Behavior as set out in the Code of Ethics. The Respondent had a professional obligation to observe high standards of personal conduct and behaviour at all times. CIMA, members of the public and fellow members of the profession have the right to expect that the Respondent would ensure that he does not commit a serious criminal offence. The Respondent failed to comply with UK law and acted in a way which he ought to have known would discredit the profession. The Committee was satisfied that the Respondent's conduct and behaviour, which resulted in his criminal convictions, fell far below the standards expected of a member of CIMA. The Committee concluded that the Respondent's conduct and behaviour is sufficiently serious to be characterised as misconduct.

The Committee also accepted the written submission of CIMA that the Respondent's convictions and underlying conduct was relevant to his membership of the Institute as it was conduct likely to seriously undermine public trust and confidence in the profession.

### **Mitigation and Sanction**

The Committee, having found that the Respondent's convictions and the underlying behaviour amounted to misconduct, went on to consider mitigation and sanction. In considering what sanction (if any) to impose, the Committee had regard to the Indicative Sanctions Guidance and to the advice of the Legal Assessor. It also had regard to the principle of proportionality and that the sanction imposed should be the least onerous suitable to reflect the seriousness of the misconduct.

The Committee identified the following aggravating factors:

- The Respondent abused his position of trust;
- The Respondent put his own interests above the interests of his client;
- There were multiple appropriations from the clients account;
- The sums appropriated were significant as the Respondent's statement of Financial Position dated 29 March 2019 refers to a Proceeds of Crime confiscation order in the sum of £69,210.14;
- The funds appropriated were for personal gain, financial or otherwise;
- The misappropriations only came to an end when the Respondent was reported to the police by the client.

The Committee identified the following mitigating factors:

- The Committee was not aware of any no previous disciplinary history;
- The Respondent admitted the criminal offences and made full admissions to the disciplinary charges;

- The Respondent has fully engaged with CIMA's regulatory process;
- The Respondent has expressed remorse which the Committee accepted as genuine.

The Committee first considered taking no action. The Committee concluded that, in view of the nature and seriousness of the Respondent's criminal convictions, and in the absence of exceptional circumstances, it would be wholly inappropriate to take no action.

The Committee then considered an Admonishment. The Panel noted that the ISG states: '*An admonishment may be appropriate where the conduct is at the lower end of the spectrum...*' The Committee concluded that the Respondent's convictions and the underlying conduct and behaviour, could not be described as minor in nature. As a consequence, the Committee concluded that an Admonishment would be wholly inappropriate and insufficient to meet the wider public interest concerns raised by the Respondent's convictions. Furthermore, the Committee concluded that it would be insufficient to maintain public confidence in the regulatory process and uphold the reputation of the profession.

The Committee went on to consider a Reprimand or a Severe Reprimand. The Committee noted that the ISG states that a Reprimand: '*...is appropriate where the conduct is of a minor nature and there is no continuing risk to the public.*' A Severe Reprimand is considered '*to be more severe than a Reprimand.*' The Committee concluded that the Respondent's conviction was serious and in these circumstances a Reprimand or even a Severe Reprimand would fall far short of meeting the wider public interest in terms of declaring and upholding proper standards and maintaining public confidence in the profession.

The Committee, having concluded that a financial penalty would serve no useful purpose, went on to consider Conditional Membership. The Committee took the view that the Respondent's conviction is not amenable to conditions as the basis for the underlying conduct and behaviour is an attitudinal failing. The Committee was unable to formulate conditions which would be workable, measurable or proportionate. Furthermore, conditions would not adequately address the serious nature of the Respondent's actions and would seriously undermine public confidence in the profession, CIMA as a regulator and the requirement to uphold high standards of conduct and behaviour.

The Panel also took into account the case of *CRHP v GDC and Fleischman* [2005] EWHC 87 Admin, where it was made clear that if a member of a profession has been convicted of a serious criminal offence and is still serving their sentence at the time the matter comes before a panel, the panel should not normally permit the member to resume their practice as a member of the profession until that sentence has been satisfactorily completed. The Committee noted that the Respondent was sentenced on 30 April 2018 and therefore even if he was released from custody in February 2019, as anticipated, he will remain on licence until 2020.

The Committee next considered a Suspension Order. A Suspension Order would send a signal to the Respondent, the profession and the public re-affirming the standards expected of a member of CIMA. However, the Committee concluded that a Suspension Order would not be sufficient to maintain public trust in the profession and the regulatory process.

Having determined that a Suspension Order does not meet the wider public interest the Committee determined that the Respondent should be expelled from membership of CIMA. An Expulsion Order is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. The Committee decided that the Respondent's case falls into this category because he engaged in serious criminal conduct which caused significant financial loss to his client. The Committee took the view such conduct and behaviour is fundamentally incompatible with continued membership. The Committee was also satisfied that any lesser sanction would undermine public confidence. The public and the profession are entitled to expect a member of the profession to uphold the highest standards of trust, confidence and behaviour. In reaching this conclusion the Committee balanced the wider public interest against the Respondent's interests. The Committee had regard to the impact an Expulsion Order would have on the Respondent, but concluded that his professional, personal and financial interests were significantly outweighed by the Committee's duty to give priority to the significant public interest concerns raised by this case.

The Committee concluded that the appropriate and proportionate order is an Expulsion Order.

## **Costs**

The Committee has considered CIMA's application for costs as set out in the schedule of estimated costs served on the Respondent on 5 March 2019 and ordered that the Respondent make a contribution of £1,825.00 towards CIMA's costs.